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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/380,614	01/07/2000	ALBERT ALBY	JEK/ALBY	2845

7590
BACON & THOMAS
625 SLATERS LANE
4TH FLOOR
ALEXANDRIA, VA 22314

05/24/2007

EXAMINER

WOODALL, NICHOLAS W

ART UNIT	PAPER NUMBER
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3733

MAIL DATE	DELIVERY MODE
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05/24/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/380,614	Applicant(s) ALBY, ALBERT	
	Examiner Nicholas Woodall	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☒ Claim(s) 3-6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to applicant's amendment received on 04/30/2007.

Priority

2. In the reply received on 04/30/2007, the applicant discussed the Notice Of acceptance Of Application Under 35 U.S.C. 371 and 37 CFR 1.495 dated April 26, 2006 as indicating the priority documents have been received by the office. The examiner acknowledges that the notice indicates that priority documents have been received and has withdrawn the requirement for the applicant to provide a copy of French application 97/03277.

Allowable Subject Matter

3. The indicated allowability of claims 1 and 2 is withdrawn in view of the newly discovered reference(s) to Blackburn. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Byrd (U.S. Patent 5,466,237) in view of Blackburn (U.S. Patent 2,108,957).

Regarding claim 1, Byrd discloses a device comprising a bone-anchoring device topped by a fixing head and a threaded nut. The fixing head includes two lateral

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branches forming an open U capable of receiving a linking rod. The threaded nut is capable of being engaged with threads located on the outer surface of the two lateral branches of the fixing head. Byrd fails to disclose the device wherein the threaded nut further includes a plate mounted in free rotation in the bore of the threaded nut wherein the width of the plate defines two lateral clearances capable of allowing the branches of a fixture are allowed to pass through. Blackburn teaches a device further comprising a threaded nut that includes a plate mounted in free rotation in the bore of the nut wherein the width of the plate defines two lateral clearances capable of allowing the branches of a fixture are allowed to pass through in order to force an element to the seat of an opening (page 1 lines 1-34). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of Byrd wherein the threaded nut further included a plate mounted in free rotation in the bore of the threaded nut wherein the width of the plate defines two lateral clearances capable of allowing the branches of a fixture are allowed to pass through in view of Blackburn in order to force an element to the seat of an opening. The examiner is interpreting the plate to include a washer element and a reinforcement element connected to the washer element, wherein the washer element is mounted in rotation on a boss on the inner surface of the nut and the reinforcement member is placed within the bore of the nut. The examiner believes this combination of references reads upon the claims because there is no requirement for the plate element to be mounted completely within the bore of the threaded nut. Therefore, as long a piece of the plate element is within the bore of the threaded nut the limitation of the claim is met.

Regarding claim 2, the combination of Byrd and Blackburn discloses a device wherein the two lateral clearances are capable of permitting the insertion of two pins from an auxiliary tool.

Allowable Subject Matter

6. Claims 3-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection. The examiner has presented a new ground of rejection for claims 1 and 2 as discussed above. Since the examiner has withdrawn the allowability of claims 1 and 2 as indicated in the previous office action this office action is non-final.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for cited references the examiner felt were relevant to the application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is 571-272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NWW



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER